



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

Dan Falcone
5081 Bradley Blvd.
Chevy Chase MD 20815

COPY MAILED

FEB 06 2008

OFFICE OF PETITIONS

In re Application of :
Daniel Francis Falcone : DECISION ON PETITION
Application No. 10/760,360 :
Filed: January 21, 2004 :
Title: DEVICE AND METHOD FOR :
EXERCISE AND REHABILITATION :

This is in response to the communication filed October 16, 2007 by applicant. Therein applicant respectfully requests withdrawal of abandonment status for the above-identified application.

The above-identified application became abandoned for failure to timely file a reply to the Office action mailed January 22, 2007. This Office action set a shortened statutory period of the longer of three months for reply, with extensions of time obtainable under § 1.136(a). A reply was received on Tuesday, April 24, 2007. This was outside of the shortened statutory period. No petition for extension of time for reply was received. Thus, the reply received was untimely. No timely reply having been received in the Office and no extension of time obtained, the above-identified application became abandoned on April 23, 2007. A courtesy Notice of Abandonment was mailed on September 13, 2007.

In response, applicant timely filed the instant petition. Applicant states that their response was timely sent. In support thereof, applicant submits a copy of their United States

Postal Service Sales Receipt, showing that \$1.46 was paid for postage of a first-class letter on April 18, 2007.

Petitioner's evidence is not persuasive that the holding of abandonment should be withdrawn. No weight is given to a USPS Sales Receipt as the Office has provided for correspondence mailed within the time period for reply to be considered timely filed even if it is received in the Office after the period for reply has ended. Specifically, 37 CFR § 1.8(a) Certificate of mailing or transmission provides:

- (a) Except in the situations enumerated in paragraph (a) (2) of this section or as otherwise expressly excluded in this chapter, correspondence required to be filed in the U.S. Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.
 - (1) Correspondence will be considered as being timely filed if:
 - (i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:
 - (A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail;
 - (B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6 (d); or
 - (C) Transmitted via the Office electronic filing system in accordance with § 1.6(a) (4); and
 - (ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

It is undisputed that the response was received in the Office on April 24, 2007. Moreover, there is no dispute that no extension of time was filed. A review of applicant's response confirms that it did not include a certificate of mailing under 37 CFR 1.8. Without such a certificate of mailing pursuant to 37 CFR 1.8 (or a showing that the paper was deposited in the USPS by Express Mail pursuant to 37 CFR 1.10), applicant's paper is

properly considered filed on the date of receipt in the Office, April 24, 2007. Receipt of the paper on April 24, 2007, is not timely.

As applicant has not established timely submission of a response to the Office action mailed January 22, 2007, the holding of abandonment is affirmed.

The petition under § 1.181 is DISMISSED.

Any request for reconsideration must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are not permitted. See 1.181(f).

Alternatively, applicant may seek revival under the provisions of 37 CFR 1.137. Such a request should include a cover letter entitled "Petition under 37 C.F.R. § 1.137(a)" or "Petition under 37 C.F.R. § 1.137(b)," as appropriate.

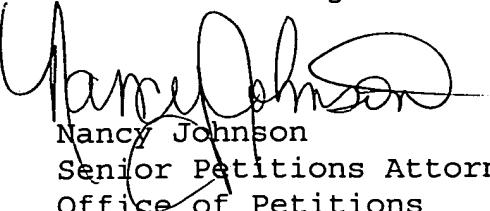
Further correspondence with respect to this decision should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By fax: (571) 273-8300
 ATTN: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions